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Policy Title:	Uses and Disclosures of Client/Patient or Participant PHI		
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Approved By:	Betty Oldenamp, DHS Secretary		
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Purpose:

The intent of this policy is to specify that client/patient or participant protected health information or PHI cannot be used or disclosed without the individual's prior authorization, and to identify those exceptions that may be applicable.

This document contains guidance for developing procedures to implement this policy.

Policy:

1. General – Individual Authorization

DHS staff shall not use or disclose PHI about a client/patient or participant of DHS programs or services without a signed authorization for release of information from the individual, or the individual's personal/legal representative, unless authorized by this policy, or as otherwise required by Federal or State law (see **1 When an Authorization is required** in the Guidance for Procedure Development section).

- a. The Family Educational Rights and Privacy Act (FERPA) and State law applicable to student records governs DHS access to, use, and disclosure of student records.
- 2. Exceptions where limited uses or disclosures are allowed without authorization, to the extent not prohibited or otherwise limited by Federal or State laws applicable to the programs or services.**
 - a. DHS staff may use or disclose PHI without the client/patient's written authorization if the law requires such use or disclosure, and the use or disclosure complies with, and is limited to, the relevant requirements of such law.
 - b. DHS staff may disclose PHI without the client/patient's written authorization for purposes of treatment, payment or health care

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operations (see **2 (b)** in the Guidance for Procedure Development section).

- c. Internal communication within DHS is permitted without the client/patient's written authorization, in compliance with the **DHS Policy DHS-100-04**, "Minimum Necessary Information".
- d. DHS clients/patients or participants may access their own PHI, with certain limitations (see **DHS Policy DHS-100-02**, "Client Privacy Rights").
- e. DHS staff may disclose PHI without the client/patient's written authorization for public health activities to the State's Public Health Authority; State's Child Protection Authority or the Food and Drug Administration (see **2 (f)** in the Guidance for Procedure Development section).
- f. If DHS staff has reasonable cause to believe that an adult is a victim of abuse or neglect, DHS staff may disclose PHI without the client/patient's written authorization, as required by law, to a government authority, including but not limited to social service or protective services agencies authorized by law to receive such reports (see **2 (g)** in the Guidance for Procedure Development section).
- g. DHS staff may disclose PHI without the client/patient's written authorization for health oversight activities authorized by law, including audits; civil, criminal, or administrative investigations, prosecutions, or actions; licensing, accreditation, or disciplinary actions; Medicaid fraud; or other activities necessary for oversight (see **2 (d)** in the Guidance for Procedure Development section).
- h. Unless prohibited, or otherwise limited, by Federal or State law applicable to the program or service requirements, DHS staff may disclose PHI without the client/patient's written authorization for judicial or administrative proceedings, in response to an order of the court, a subpoena, a discovery request or other lawful process (see **2 (h)** in the Guidance for Procedure Development section).
- i. For limited law enforcement purposes, to the extent authorized by applicable Federal or State law, DHS staff may report certain injuries or wounds; provide information to identify or locate a suspect, victim, or witness; alert law enforcement of a death as a result of criminal conduct; and provide information which constitutes evidence of criminal conduct

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on DHS premises without the client/patient's written authorization (see **2 (i)** in the Guidance for Procedure Development section).

- j. DHS staff may disclose to a coroner or medical examiner, for the purpose of identifying a deceased person, determining a cause of death, or other duties authorized by law without the client/patient's written authorization.
- k. DHS staff may disclose PHI without the client/patient's written authorization to funeral directors, consistent with applicable law, as needed to carry out their duties regarding the decedent. DHS may also disclose such information prior to, and in reasonable anticipation of, the death.
- l. DHS staff may disclose PHI without the client/patient's written authorization to organ procurement organizations or other entities engaged in procuring, banking, or transplantation of cadaver organs, eyes, or tissue, for the purpose of facilitating transplantation.
- m. DHS staff may disclose PHI without the client/patient or participant's written authorization for research purposes, as specified in **DHS Policy DHS-100-06**, "Uses and Disclosures for Research Purposes & Waivers".
- n. DHS staff may disclose PHI without the client/patient's written authorization to avert a serious threat to health or safety (see **2 (m)** in the Guidance for Procedure Development section).
- o. DHS staff may disclose PHI without the client/patient's written authorization for other specialized government functions, including authorized Federal officials for the conduct of lawful intelligence, counterintelligence, and other national security activities that Federal law authorizes (see **2 (j)** in the Guidance for Procedure Development section).
- p. DHS staff may disclose limited PHI without the client/patient's written authorization to a correctional institution or a law enforcement official having lawful custody of an inmate, for the purpose of providing health care or ensuring the health and safety of individuals or other inmates (see **2 (k)** in the Guidance for Procedure Development section).
- q. DHS staff may disclose PHI without the client/patient's written authorization in case of an emergency to the extent needed to provide emergency treatment (see **2 (l)** in the Guidance for Procedure Development section).

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3. **Client/Patient or Participant's authorization that is not required if they are informed in advance and given a chance to object:**

- a. In limited circumstance, DHS staff may use or disclose the client/patient's PHI without the individual's written authorization (see **3** in the Guidance for Procedure Development section), if:
 - i. DHS staff informs the client/patient in advance and the person has been given an opportunity to object.
 - ii. Unless otherwise prohibited by law, DHS staff may orally inform the client/patient and obtain and document the individual's oral agreement.
- b. Disclosures are limited to use in a facility directory to assist visitors to locate client/patients or to inform clergy of the client/patient or for disclosure of health information to a family member, other relative, or close personal friend of the client/patient, or any other person named by the client/patient.
- c. If otherwise permitted by Federal or State law.

Exception: For individuals receiving alcohol and drug abuse, mental health, or vocational rehabilitation services, oral permission is not sufficient and written authorization is required.

4. **Re-disclosure of an Individual's PHI:**

- a. Unless prohibited by Federal or State law, PHI held by DHS and authorized by the client/patient for disclosure may be subject to re-disclosure and no longer protected by DHS policy. Whether or not the PHI remains protected depends on whether the recipient is subject to Federal or State privacy laws, court protective orders or other lawful process.
- b. Vocational Rehabilitation and Alcohol and Drug Abuse information: Federal regulations (34 CFR 361.38 and 42 CFR 2) prohibit DHS from making further disclosure of vocational rehabilitation and alcohol and drug abuse information without the specific written authorization of the individual to whom it pertains.
- c. South Dakota law (SDCL 34-22-12.1) prohibits further disclosure of HIV information.

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- d. South Dakota law places restrictions on re-disclosure of information regarding clients/patients or participants of publicly funded mental health or developmental disability providers.

5. Revocation of Authorization

- a. A client/patient can revoke an authorization at any time.
- b. Any revocation must be in writing and signed by the client/patient.
- c. No such revocation shall apply to information already released while the authorization was valid and in effect.

(see **5** in the Guidance for Procedure Development section)

6. Verification of Individuals Requesting PHI

PHI about a client/patient may not be disclosed without verifying the identity of the individual requesting the information, if the DHS staff member fulfilling the request does not know that individual.

(see **6** in the Guidance for Procedure Development section)

7. Denial of Requests for PHI

Unless a client/patient has signed an authorization, or the PHI about the client/patient can be disclosed pursuant to this Policy, DHS shall deny any request for disclosure of individual PHI.

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Guidance for Procedure Development:

The following guidelines should be used in developing procedures to implement this policy.

1. When an Authorization is required

- a. Except as otherwise permitted or required by law and consistent with these policies, DHS staff shall obtain a completed and signed authorization for release of information from the client/patient, or the client/patient's personal/legal representative, before obtaining or using PHI about the individual from a third party or disclosing any information about the individual to a third party.
 - i. A signed authorization is required in the following situations:
 - A. Prior to an individual's enrollment or admission in DHS administered programs or services, if necessary for determining eligibility for enrollment or admission;
 - B. For the use and disclosure of psychotherapy notes (for exception see **2 (e)** below of these procedures);
 - C. For disclosures to an employer for use in employment-related determinations;
 - D. For research purposes unrelated to the client/patient's treatment; and
 - E. Where Federal or State law requires a signed authorization.
- b. DHS staff may obtain, use, or disclose PHI only if the written authorization includes all the required elements of a valid authorization. The required elements are described in **1 (g)** below of these procedures.
- c. Uses and disclosures must be consistent with what the client/patient has authorized on a signed authorization form.
- d. An authorization must be voluntary. DHS staff may not require the individual to sign an authorization as a condition of providing services, except:

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- i. Before providing research-related treatment, a DHS health care provider may condition the individual to sign an authorization for the use or disclosure of health information for such research; **or**
 - ii. Before determining eligibility for services, DHS can condition the client/patient to sign an authorization if needed to help determine the applicant's eligibility for enrollment or admission and the authorization is not for use or disclosure of psychotherapy notes; **or**
 - iii. DHS and its contracted health care providers can require the client/patient to sign an authorization before providing health care that is solely for the purpose of creating PHI for disclosure to a third party. For example, a physician may condition the provision of a physical examination to be paid for by a life insurance issuer on the client/patient's authorization to disclose the results of that examination to the life insurance issuer.
- e. An authorization that is required for determining eligibility for services cannot be combined with a voluntary authorization. A required authorization and a voluntary authorization must be separate documents, signed separately.
 - f. Each authorization for use or disclosure of the client/patient's PHI must be fully completed jointly by the DHS staff member and the individual, whenever possible, with the staff member taking reasonable steps to ensure that the client/patient understands why the information is to be used or released.
 - g. DHS staff will use the approved DHS authorization forms applicable to that DHS program or service.
 - i. A valid authorization shall contain the following information:
 - A. A description of the PHI to be used or disclosed, that identifies the purpose of the information in a specific and meaningful fashion;
 - B. The name or other specific information about the person(s), classification of persons, or entity (i.e., DHS or specified DHS program) authorized to make the requested use or disclosure;
 - C. The name or other specific identification of the person(s), classification of persons, or entity to whom DHS may make the requested use or disclosure;

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- D. A description of each purpose of the use or disclosure. The statement “at the request of the individual” is a sufficient description of the purpose when an individual initiates the authorization and does not, or elects not to, provide a statement of the purpose;
 - E. An expiration date or an expiration event that relates to the individual or to the purpose of the use or disclosure;
 - F. Signature of the client/patient, or of the client/patient’s personal/legal representative (when applicable), and the date of signature; **and**
 - G. If the client/patient’s personal/legal representative signs the authorization form instead of the client/patient, a description or explanation of the representative’s authority to act for the individual, including a copy of the legal court document (if any) appointing the personal/legal representative, must also be provided.
- ii. In addition to the core elements the authorization shall include statements that:
 - A. The client/patient has the right to revoke the authorization in writing at any time, how to revoke the authorization, and any exceptions to the client/patient’s right to revoke the authorization;
 - B. That treatment, payment, enrollment or eligibility for benefits or services can not be conditioned on obtaining the client/patient’s authorization (with the exceptions as outlined in **1 (d)** above of these procedures); **and**
 - C. The potential for the PHI to be re-disclosed by the recipient and thus, no longer protected under DHS policies and the Privacy Rule.
 - iii. The authorization must be written in plain language and a copy of the signed authorization shall be given to the client/patient.
 - iv. DHS must document and retain each signed Authorization Form for a minimum of six years.

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2. Exceptions allowing limited disclosures without authorizations

To the extent not otherwise prohibited or limited by Federal or State laws applicable to the DHS program or services, DHS staff may use or disclose PHI without the client/patient's written authorization in the following circumstances:

- a. DHS staff may disclose information without the client/patient's written authorization to the client/patient who has requested disclosure of their own information to themselves.
- b. DHS may use or disclose psychotherapy notes without the client/patient's written authorization to carry out the following treatment, payment, or health care operations:
 - i. In training programs where students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling;
 - ii. When a health oversight agency uses or discloses PHI in connection with oversight of the originator of the psychotherapy notes;
 - iii. By the originator of the psychotherapy notes for treatment purposes;
or
 - iv. To the extent authorized under State law to defend DHS in a legal action or other proceeding brought by the client/patient or participant.

Psychotherapy notes as defined in 45 CFR 164.501 means:

Notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record; **and**

Excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

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- c. DHS staff may disclose information without the client/patient's written authorization to another covered entity or a health care provider for the payment activities of the entity that receives the PHI.
- d. DHS staff may disclose PHI without the client/patient's written authorization to another entity covered by Federal HIPAA law and rules for the health care activities of that entity, if:
 - i. Both that entity and DHS has or has had a relationship with the individual who is the subject of the PHI;
 - ii. The PHI pertains to such relationship; **and**
 - iii. The disclosure is for the purpose of:
 - A. Conducting quality assessment and improvement activities, including: outcome evaluation and development of clinical guidelines, provided that obtaining generalized knowledge is not the primary purpose of any studies resulting from such activities; population-based activities relating to improving health or reducing health care costs; protocol development; case management and care coordination; contacting health care providers and client/patients with information about treatment alternatives; and related functions that do not include treatment; **or**
 - B. Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance; conducting training programs in which students, trainees or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers; training of non-health care professionals; accreditation, certification, licensing, or credentialing activities; **or**
 - C. Detecting health care fraud and abuse or for compliance purposes.
- e. DHS staff may use or disclose psychotherapy notes without the client/patient's written authorization only for:
 - i. Use by the originator of the psychotherapy notes, for treatment purposes;

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- ii. Use or disclosures by DHS in training programs where students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling;
 - iii. When being used or disclosed by a health oversight agency in connection with oversight of the originator of the psychotherapy notes; **or**
 - iv. To the extent authorized under State law to defend DHS in a legal action or other proceeding brought by the individual.
- f. DHS staff may disclose the client/patient's PHI for governmental public health activities without the individual's written authorization to:
- i. A governmental public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability. This includes but is not limited to reporting disease, injury, vital events such as birth or death, and the conducting of public health surveillance, investigations, and interventions;
 - ii. An official of a foreign government agency that is acting in collaboration with a lawful governmental public health authority;
 - iii. A governmental authority that is authorized by law to receive reports of child abuse or neglect;
 - iv. A person subject to the jurisdiction of the Federal Food and Drug Administration (FDA), regarding an FDA-regulated product or activity for which that person is responsible, for activities related to the quality, safety, or effectiveness of such FDA-related product or activity. Such purposes include:
 - A. Collecting or reporting adverse events, product defects or problems (including product labeling problems), or biological product deviations;
 - B. Tracking FDA-related products;
 - C. Enabling product recalls, repairs, or replacement, or look back;
or
 - D. Conducting post market surveillance.

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- v. A person who may have been exposed to a communicable disease, or may be at risk of contracting or spreading a disease or condition, if DHS, or other public health authority, is authorized by law to notify such person as necessary in conducting a public health intervention or investigation; **or**
- vi. An employer, about an individual who is a member of the workforce of the employer, if:
 - A. The covered entity is a covered health care provider who is a member of the workforce of such employer or who provides health care to the individual at the request of the employer to:
 - I. Conduct an evaluation relating to medical surveillance of the workplace; **or**
 - II. Evaluate whether the individual has a work-related illness or injury.
 - B. The PHI disclosed consists of findings concerning a work-related illness or injury or a workplace-related medical surveillance;
 - C. The employer needs such findings in order to comply with its obligations, under 29 CFR 1904-1928, 30 CFR 50-90, or under State law having a similar purpose, to record such illness or injury or to carry out responsibilities for workplace medical surveillance; **and**
 - D. The covered health care provider provides written notice to the individual that PHI relating to the medical surveillance of the workplace and work-related illnesses and injuries is disclosed to the employer:
 - I. By giving a copy of the notice to the individual at the time the health care is provided; **or**
 - II. If the health care is provided on the work site of the employer, by posting the notice in a prominent place at the location where the health care is provided.
- g. DHS staff may use or disclose PHI without the client/patient's written authorization if DHS has reasonable cause to believe that an adult is a victim of abuse or neglect (abuse of the mentally ill or developmentally

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disabled), DHS may disclose PHI to a government authority, including a social service or protective services agency, authorized by law to receive such reports:

- i. If the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law;
- ii. If the individual agrees to the disclosure, either orally or in writing;
or
- iii. When DHS staff, in the exercise of professional judgment and in consultation with appropriate DHS supervisor, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; **or**
- iv. When the client/patient is unable to agree because of incapacity, a law enforcement agency or other public official authorized to receive the report provides assurances that:
 - A. The PHI being sought is not intended to be used against the client/patient, and
 - B. An immediate law enforcement activity would be materially and adversely affected by waiting until the client/patient is able to agree to the disclosure.
- v. When DHS staff makes a disclosure permitted above, DHS staff must promptly inform the client/patient that such a report has been or will be made, except if:
 - A. DHS staff, in the exercise of professional judgment and in consultation with appropriate DHS supervisor, believes informing the client/patient would place the client/patient at risk of serious harm; **or**
 - B. DHS staff would be informing a personal/legal representative and DHS staff reasonably believes the personal/legal representative is responsible for the abuse, neglect or other injury, and that informing such person would not be in the best interests of the client/patient, as determined by DHS staff, in the exercise of professional judgment and in consultation with appropriate DHS supervisor.

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- h. DHS staff may disclose PHI without the client/patient's written authorization in the course of any judicial or administrative proceeding, when:
 - i. In response to an order of a court or administrative tribunal, provided that DHS staff discloses only the PHI expressly authorized by such order; **or**
 - ii. In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if:
 - A. DHS receives satisfactory assurances through a written statement and accompanying documentation from the party requesting the PHI that:
 - I. They have made a good faith attempt to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known address);
 - II. The notice included sufficient information about the litigation or proceeding in which the PHI is requested to permit the individual to raise an objection to the court or administrative tribunal; **and**
 - III. The time for the individual to raise the objections to the court or administrative tribunal has elapsed and no objections were filed or all objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution; **or**
 - B. The party seeks this information through a qualified protective order and provides satisfactory assurances through a written statement and accompanying documentation that:
 - I. The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; **or**
 - II. The party seeking the PHI has requested a qualified protective order from such court or administrative tribunal.

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A qualified protective order means:

An order of a court or an administrative tribunal or a stipulation by the parties that prohibits the parties from using or disclosing the PHI for any purpose other than the litigation or proceeding for which it was requested for and requires the PHI to be returned to DHS or destroyed (including all copies made) at the end of the litigation or proceeding.

Exception: DHS staff may disclose information regarding alcohol or drug treatment participants only if required by a special court order pursuant to 42 CFR 2. In mental health proceedings, records regarding a person who is released prior to or directly following completion of the hearing, shall be sealed upon release and opened only by court order.

- C. DHS staff will refer any questions or concerns regarding what is required by law, or by a court order or subpoena, to DHS Legal Counsel.
- iii. DHS staff may use or request PHI to investigate a grievance or appeal made to DHS about an individual's eligibility or right to benefits or services.
 - A. Pursuant to applicable laws and rules, DHS staff may use or disclose PHI that DHS has compiled on its own or has received from external sources.
 - B. That information may be reviewed by DHS staff and legal counsel or the providers involved in the service or action, and may be provided to a hearing officer, to assist DHS in making a decision about the appeal or grievance.
- iv. If DHS is sued or if a suit is filed on behalf of DHS, the legal counsel for the state will address or respond to legal issues related to the use and disclosure of PHI. DHS will identify confidentiality issues for discussion with the assigned legal counsel, in consultation with the DHS Privacy personnel.
- v. If a court or County Board of Mental Illness or County Review Board orders DHS to conduct a mental examination, or orders DHS to provide any other report or evaluation to the court or board such examination, report or evaluation shall be deemed to be "required by

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law" for purposes of HIPAA, and DHS staff will comply with the court or board order.

- vi. In any case in which Federal or State law prohibits or restricts the use or disclosure of PHI in an administrative or judicial proceeding, DHS staff shall assert the confidentiality of such confidential information, consistent with DHS policies applicable to the program, service or activity, to the presiding officer at the proceeding. A HIPAA-authorized protective order may not be sufficient to authorize disclosure if it does not address other applicable confidentiality laws.
- i. DHS staff may use or disclose PHI without the client/patient's written authorization for law enforcement purposes unless Federal or State law prohibits such disclosure.
 - i. DHS staff may disclose PHI when reporting certain types of wounds or other physical injuries.
 - ii. DHS staff may disclose PHI in compliance with, and limited to the relevant specific requirements of:
 - A. A court order or warrant, summons or subpoena issued by a judicial officer;
 - B. A grand jury subpoena; **or**
 - C. An administrative request, including administrative subpoena or summons, a civil or authorized investigative demand, or similar lawful process, provided that the information is relevant, material, and limited to a legitimate law enforcement inquiry.
 - I. Follow DHS procedures for responding to subpoenas, discovery requests, or other requests for documents that DHS may have regarding an individual. Do not ignore any subpoena or other legal document (see **2 (h)** above of these procedures).
- iii. DHS staff may disclose limited PHI upon request of a law enforcement official without the client/patient's written authorization

Exception: Information regarding alcohol or drug treatment participants may be disclosed only on the basis of a special court order pursuant to 42 CFR 2.

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for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, provided that:

- A. The information DHS may disclose is limited to:
 - I. Name and address;
 - II. Date and place of birth;
 - III. Social security number;
 - IV. ABO blood type and rh factor;
 - V. Type of injury;
 - VI. Date and time of treatment;
 - VII. Date and time of death if applicable; **and**
 - VIII. A description of distinguishing physical characteristics including height, weight, gender, race, hair and eye color, presence or absence of beard or mustache, scars, and tattoos.

Exception: DHS staff may not disclose, for purposes of identification or location, PHI related to the subject's DNA or DNA analysis, dental records, or typing, samples, or analysis of bodily fluids or tissues, unless ordered to do so by a court or a court approved search warrant.

- iv. DHS staff may disclose PHI upon request to a law enforcement official about the client/patient, who is or is suspected to be the victim of a crime, if:
 - A. DHS is otherwise authorized by law to disclose that information for purposes of an abuse reporting law or for public health or health oversight purposes; **or**
 - B. The client/patient agrees to the disclosure, either orally or in writing;
 - I. If a client/patient agrees to the disclosure, DHS staff will document the oral agreement and ask for the client/patient's signature; **or**

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- C. DHS staff is unable to obtain the client/patient's agreement due to incapacity or emergency circumstance, if:
 - I. The law enforcement official provides assurances that such PHI is needed to determine whether a violation of law by someone other than the victim has occurred and such information is not intended for use against the victim;
 - II. The law enforcement official provides assurances that immediate law enforcement activity would be materially and adversely affected by waiting until the client/patient is able to agree to the disclosure; **and**
 - III. DHS determines that the disclosure is in the best interests of the client/patient.
- v. DHS staff may disclose PHI to a law enforcement official about client/patient who has died, for the purpose of alerting law enforcement of the death, if DHS staff suspects that death may have resulted from criminal conduct.
- vi. DHS staff may disclose PHI to a law enforcement official if DHS believes in good faith that the information constitutes evidence of criminal conduct on DHS premises.
- vii. DHS staff may disclose PHI to a law enforcement official if DHS staff believes it is necessary for law enforcement authorities to identify or apprehend an individual:
 - A. Because of a statement by a person admitting participation in a violent crime that DHS reasonably believes may have caused serious harm to the victim; or
 - B. Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody.
- j. DHS staff may disclose the client/patient's PHI without the individual's written authorization for the following specialized government functions unless such disclosure is prohibited by Federal or State law.

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- i. For individuals who are Armed Forces personnel, as deemed necessary by appropriate military command authorities to ensure the proper execution of the military mission.
 - ii. To authorized Federal officials for conducting lawful intelligence, counterintelligence, and other national security activities, as authorized by the federal National Security Act (50 U.S.C. 401, et seq.) and implementing authority.
 - iii. To authorized Federal officials for the protection of the President or of other persons authorized by applicable Federal law.
- k. DHS staff may use or disclose PHI without the client/patient's written authorization consistent with applicable law to a correctional institution or a law enforcement official having lawful custody of an inmate or other person, if the institution or official provides assurances that the information is necessary for:
- i. Providing health care to the individual.
 - ii. The health or safety of the individual or other inmates.
 - iii. The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another.
- l. DHS staff may use or disclose PHI without the client/patient's written authorization in the case of an emergency.
- i. Medical emergency information is restricted to PHI needed by the health care provider to deal with the emergency, and must be the minimum amount necessary to satisfy the request. Once the emergency situation subsides, DHS staff should obtain assurance that the PHI released will not be re-disclosed.
 - ii. Any disclosure of PHI must be recorded in the **DHS 2097**, "Disclosures of Protected Health Information," as outlined in **DHS Policy DHS-100-02**, "Client/Patient Privacy Rights".
- m. DHS staff may disclose PHI without the client/patient's written authorization to avert a serious threat to health or safety, if:

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- i. DHS staff believes in good faith that the information is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; **and**
 - ii. The report is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; **or**
 - iii. Is necessary for law enforcement authorities to identify or apprehend an individual due to:
 - A. A statement by an individual admitting participation in a violent crime that DHS reasonably believes may have caused serious physical harm to the victim; **or**
 - B. Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody.
3. **Procedures when Client/Patient or Participant authorization is not required if they are informed in advance and given a chance to object**
- a. In some limited circumstances, DHS staff may use or disclose the client/patient's PHI without the individual's written authorization, but only if the individual has been informed in advance and has been given the opportunity to either agree or to refuse or restrict the use or disclosure. These circumstances are:
 - i. For use in a facility directory to assist visitors to locate client/patients or to inform clergy of the client/patient; **or**
 - ii. For disclosure of health care information to a family member, other relative, or close personal friend of the client/patient, or any other person named by the client/patient, subject to the following limitations:
 - A. DHS staff may reveal only the PHI that directly relates to such person's involvement with the client/patient's care or payment for such care.
 - B. DHS staff may use or disclose PHI for notifying (including identifying or locating) a family member, personal/legal representative, or other person responsible for care of the

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client/patient, regarding the client/patient's location, general condition, or death.

- C. If the client/patient is present for or available prior to, such a use or disclosure, DHS staff may disclose the PHI if they:
 - I. Obtain the client/patient's agreement;
 - II. Provide the client/patient an opportunity to object to the disclosure, and the client/patient does not express an objection; **or**
 - III. Reasonably infer from the circumstances that the client/patient does not object to the disclosure.
- D. If the client/patient is not present, or the opportunity to object to the use or disclosure cannot practicably be provided due to the client/patient's incapacity or an emergency situation, DHS staff may determine, using professional judgment, that the use or disclosure is in the client/patient's best interests.
 - I. Any agreement, objection, refusal, or restriction by the client/patient, may be oral or in writing. DHS staff will document any such oral communication in the client/patient's case file.
 - II. DHS staff will also document in the case file the outcome of any opportunity provided to object; the client/patient's decision not to object; or the inability of the client/patient to object.

Exception: Oral permission to use or disclose information for purposes described in this section is not sufficient when the individual is referred to or receiving alcohol and drug abuse treatment, mental health or vocational rehabilitation services. Written authorization is required under those circumstances.

4. Re-disclosure of an Individual's PHI

There are no accompanying procedures.

5. Revocation of an Authorization

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- a. When a client/patient revokes written authorization to disclose PHI, DHS staff must boldly mark the authorization form "revoked" and include the date, and signature of the requesting individual.
- b. Revoked forms must be maintained in the client/patient's file.

6. Verification of Individuals Requesting PHI

- a. PHI may not be disclosed without verifying the identity of the person requesting the information if the person is not known to the DHS staff member fulfilling the request.
- b. If the requestor is a Provider, they will need to supply their provider identification number and/or telephone number for call back.
- c. For all other requestors, reasonable evidence should be supplied in the form of the following:
 - i. Official credentials;
 - ii. Driver's license or State issued ID;
 - iii. Written statement of identity on agency letterhead; or
 - iv. Similar proof.

7. Denial of Requests for PHI

There are no accompanying procedures.

Form(s):

- **DHS 2097**, "Disclosures of Protected Health Information"
- **Approved DHS authorization forms**

Reference(s):

- 29 CFR 1904-1928
- 30 CFR 50-90
- 34 CFR 361.38
- 42 CFR 2
- 45 CFR 164.502(a)
- 45 CFR 164.508 – 164.512
- 50 U.S.C. 401, et seq.

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- SDCL 34-22-12.1

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Contact(s):

- For Central Office Staff and Field Office Staff - DHS HIPAA Privacy Office, (605) 773-5990
- For Human Services Center Staff – DHS HIPAA Privacy Contact, (605) 668-3100
- For South Dakota Developmental Center Staff – DHS HIPAA Privacy Contact, (605) 472-2400